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18 **WALGREEN CO.**  
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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

LETHIA PERRY, an individual,

Plaintiff,

vs.

WALGREEN CO., an Illinois corporation, also d/b/a WALGREENS; LORI CEBALLOS, an individual; and DOES 1 through 50, inclusive,

Defendants.

Case No. 5:18-cv-1582

(Riverside County Superior Court Case No. RIC1812640)

**DEFENDANT WALGREEN CO.'s NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. §§ 1332, 1441 AND 1446**

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1           **TO THE HONORABLE JUDGES OF THE UNITED STATES**  
2 **DISTRICT COURT, FOR THE CENTRAL DISTRICT OF CALIFORNIA,**  
3 **AND TO PLAINTIFF LETHIA PERRY AND HER ATTORNEYS OF**  
4 **RECORD:**

5           **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. sections 1332, 1441(a)  
6 and (b), and 1446, Defendant Walgreen Co. (“Walgreens”) removes the  
7 above-referenced action from the Superior Court of the State of California, County  
8 of Riverside, Case No. RIC1812640, to the United States District Court, for the  
9 Central District of California. Federal jurisdiction of this action is proper on the  
10 basis of diversity jurisdiction under 28 U.S.C. sections 1332 and 1441(b). Removal  
11 is based on the following grounds:

12 **I. BACKGROUND**

13           1. On June 21, 2018, the unverified Complaint (the “Complaint”) was  
14 filed on behalf of Plaintiff Lethia Perry (“Plaintiff”) in the Superior Court of the  
15 State of California, County of Riverside, entitled, “Lethia Perry, an individual v.  
16 Walgreen Co., an Illinois corporation, also d/b/a Walgreens’ Lori Ceballos, an  
17 individual, and Does 1 through 50, inclusive,” designated as Case No. RIC1812640  
18 (the “State Court Action”). The Complaint alleges eleven causes of action:  
19 (1) “Disability Discrimination (Violation of Gov. Code § 12940(m));” (2) “Failure to  
20 Provide Reasonable Accommodation (Violation of Gov. Code § 12940(m));”  
21 (3) “Failure to Engage in a Timely, Good Faith, Interactive Process (Violation of  
22 Gov. Code § 12940(n));” (4) “Retaliation for Exercising Rights Under the CFRA  
23 (Violation of Gov. Code § 12945.2(l));” (5) “Retaliation for Exercising Rights  
24 Under the FEHA (Violation of Gov. Code § 12940(h));” (6) “Age Discrimination  
25 (Violation of Gov. Code § 12940(a));” (7) “Hostile Work Environment Harassment  
26 (Violation of Gov. Code § 12940(j));” (8) “Failure to Prevent Discrimination,  
27 Harassment, and Retaliation (Violation of Gov. Code § 12940(k); (9) “Tortious

1 Wrongful Termination in Violation of Public Policy;” (10) “Declaratory Relief;”  
 2 and (11) Injunctive Relief.

3       2. On June 26, 2018, Plaintiff personally served the following documents  
 4 to CSC, Walgreens’ registered agent for service of process: Summons; Complaint;  
 5 Notice of Department Assignment; Notice of Case Management Conference;  
 6 Alternative Dispute Resolution (ADR) Information Package; and Alternative  
 7 Dispute Resolution (ADR) Stipulation. A true and correct copy of the Complaint is  
 8 attached as **Exhibit 1**. A true and correct copy of the Summons is attached as  
 9 **Exhibit 2**. A true and correct copy of the Certificate of Counsel is attached as  
 10 **Exhibit 3**. A true and correct copy of the Notice of Department Assignment is  
 11 attached as **Exhibit 4**. A true and correct copy of the Notice of Case Management  
 12 Conference is attached as **Exhibit 5**. A true and correct copy of the Alternative  
 13 Dispute Resolution (ADR) Information Package is attached as **Exhibit 6**. A true  
 14 and correct copy of the Alternative Dispute Resolution (ADR) Stipulation is  
 15 attached as **Exhibit 7**. A true and correct copy of the Notice of Service of Process is  
 16 attached as **Exhibit 8**.

17       3. On July 9, 2018, Defendant Lori Ceballos was personally served with  
 18 the following: Summons; Complaint; Notice of Department Assignment; Notice of  
 19 Case Management Conference; Alternative Dispute Resolution (ADR) Information  
 20 Package; and Alternative Dispute Resolution (ADR) Stipulation. A true and correct  
 21 copy of the Summons is attached hereto as **Exhibit 9**.

22       4. On July 23, 2018, Plaintiff served on Defendant’s counsel a copy of a  
 23 “Notice of Association of Counsel” which was filed in the State Court Action. A  
 24 true and correct copy of this document is attached hereto as **Exhibit 10**.

25       5. Walgreens filed an Answer in the State Court Action on July 25, 2018.  
 26 A true and correct copy of Walgreens’ Answer is attached hereto as **Exhibit 11**. As  
 27 discussed in greater detail below, jurisdiction based on diversity of citizenship is

1 proper because Defendant Walgreen Co. is not a citizen of California. Although  
 2 Plaintiff also names Lori Ceballos as an individual defendant, and she is believed to  
 3 be a citizen of the State of California (Exhibit 1, Complaint, ¶ 5), she is a “sham”  
 4 defendant, such that for purposes of diversity of citizenship jurisdiction, she must be  
 5 disregarded.

## 6 **II. TIMELINESS OF REMOVAL**

7 6. This Notice of Removal is timely because it is being filed within thirty  
 8 days of completion of service of the Summons and Complaint upon Walgreens on  
 9 June 26, 2018, and within one year of the commencement of this action. 28 U.S.C.  
 10 § 1446(b).

## 11 **III. PROCEEDINGS IN STATE COURT**

12 7. Exhibits 1 through 11 attached hereto constitute all of the pleadings in  
 13 the State Court Action that have been served on Walgreens, filed or served by  
 14 Walgreens, or retrieved from the Court’s records prior to the filing of this Notice of  
 15 Removal.

## 16 **IV. JURISDICTION BASED ON DIVERSITY OF CITIZENSHIP**

17 8. This Court has original jurisdiction of this action under 28 U.S.C.  
 18 Section 1332(a)(1). As set forth below, this action is removable pursuant to  
 19 28 U.S.C. section 1441(a) as the amount in controversy is in excess of \$75,000,  
 20 exclusive of interest and costs, and is between citizens of different states.

### 21 **A. Plaintiff Is A Citizen Of California**

22 9. Plaintiff is and, at all times since the commencement of this action has  
 23 been, a resident and citizen of the State of California. (Exhibit 1, Complaint, ¶ 3.)  
 24 For diversity purposes, a person is a “citizen” of the state in which he or she is  
 25 domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983).  
 26 A person’s domicile is the place he or she resides with the intent to remain  
 27 indefinitely. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

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1 Residence is *prima facie* evidence of domicile. *State Farm Mut. Auto Ins. Co. v.*  
 2 *Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). The Complaint alleges that Plaintiff  
 3 currently is and “was at all times” a resident of Riverside County, in the State of  
 4 California. (Exhibit 1, Complaint, ¶ 3.) Plaintiff, therefore, is, and at all times since  
 5 the commencement of this action has been, a resident and citizen of the State of  
 6 California.

7           **B. Walgreen Co. Is Not A Citizen of California**

8           10. Walgreens is now and was at the time of the filing of this action, a  
 9 citizen of a State other than California within the meaning of 28 U.S.C. section  
 10 1332(c)(1). For diversity purposes, “a corporation shall be deemed to be a citizen of  
 11 every State and foreign state by which it has been incorporated and of the State or  
 12 foreign state where it has its principal place of business.” 28 U.S.C. 1332(c)(1).

13           11. The United States Supreme Court, in *Hertz Corp. v. Friend*, 559 U.S.  
 14 77, 92-93 (2010), held that a corporate entity’s “principal place of business” for  
 15 determining its citizenship is its “nerve center”:

16           We conclude that “principal place of business” is best read  
 17 as referring to the place where a corporation’s officers  
 18 direct, control, and coordinate the corporation’s activities.  
 19 It is the place that Courts of Appeals have called the  
 20 corporation’s “nerve center.” And in practice it should  
 21 normally be the place where the corporation maintains its  
 22 headquarters -- provided that the headquarters is the actual  
 23 center of direction, control, and coordination, i.e., the  
 24 “nerve center.” *Id.* at 92-93.

25           12. Walgreens is now, and ever since this action commenced, has been  
 26 incorporated under the laws of the State of Illinois, with its principal place of  
 27 business in Illinois. Declaration of Amelia Legutki (“Legutki Decl.”) ¶ 2. Because  
 28 Walgreens’ corporate headquarters and executive offices are located in Deerfield,  
 Illinois where its high level officers direct, control, and coordinate the Company’s

1 activities, Walgreens' principal place of business or "nerve center" is in Deerfield,  
 2 Illinois. Legutki Decl. ¶ 3. Accordingly, Walgreens is, and has been at all times  
 3 since this action commenced, a citizen of the State of Illinois. As a result,  
 4 Walgreens is not now, and was not at the time of the filing of the State Action, a  
 5 citizen of the State of California for removal purposes.

6       13. Accordingly, Defendant Walgreens is not a citizen of the State of  
 7 California. Rather, Walgreens is a citizen of the State of Illinois pursuant to the  
 8 "nerve center" test and its incorporation.

9           **C. Because Individual Defendant Lori Ceballos Is A Sham Defendant,**  
 10           **Her Citizenship Should Be Disregarded For Determining Diversity**

11       14. Defendant Lori Ceballos ("Ceballos" or "Individual Defendant") must  
 12 be disregarded for purposes of diversity because she is a "sham" defendant, *i.e.*, she  
 13 cannot be found liable as a matter of law. *See, e.g., Morris v. Princess Cruises, Inc.*,  
 14 236 F.3d 1061, 1067 (9th Cir. 2001).

15       15. It is well-settled that a party cannot attempt to defeat diversity of  
 16 citizenship jurisdiction by adding "sham" defendants. *See, e.g., Morris*, 236 F.3d at  
 17 1067; *Dodson v. Spillada Maritime Corp.*, 951 F.2d 40, 42 (5th Cir. 1992); *TPS*  
 18 *Utilicom Serv., Inc. v. AT & T Corp.*, 223 F. Supp. 2d 1089, 1100-1101 (C.D. Cal.  
 19 2002) (same); *Cofer v. Parker-Hannifin Corp.*, 194 F. Supp. 3d 1014, 1022 (C.D.  
 20 Cal. 2016) (same).

21       16. Joinder of a defendant is a "sham" and is fraudulent if the defendant  
 22 cannot be liable to the plaintiff on any theory alleged in the complaint. *See, e.g.,*  
 23 *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998); *McCabe v.*  
 24 *General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987).

25       17. When determining whether a defendant is fraudulently joined, "[t]he  
 26 court may pierce the pleadings, consider the entire record, and determine the basis  
 27 of joinder by any means available." *Lewis v. Time Inc.*, 83 F.R.D. 455, 460 (E.D.

1 Cal. 1979) (“[I]t is well settled that upon allegations of fraudulent joinder . . . federal  
 2 courts may look beyond the pleadings to determine if the joinder ... is a sham or  
 3 fraudulent device to prevent removal.”); *McCabe*, 811 F.2d at 1339 (a defendant “is  
 4 entitled to present the facts showing the joinder to be fraudulent”).

5       18. If the facts reveal that joinder is fraudulent, the defendant may be  
 6 dismissed from the action pursuant to Rule 21 of the Federal Rules of Civil  
 7 Procedure, which provides that “[p]arties may be dropped or added by order of the  
 8 court on motion of any party . . . at any stage of the action and on such terms as are  
 9 just.” *Gasnik v. State Farm Ins. Co.*, 825 F. Supp. 245, 248-249 (E.D. Cal. 1992).

10      19. Plaintiff’s Complaint arises from an employment dispute with her  
 11 former employer, Walgreens. However, Plaintiff has also asserted a claim against  
 12 Ceballos for purported “Hostile Work Environment Harassment” based upon  
 13 “disability,” “age” and “need for medical leave” pursuant to Cal. Gov. Code  
 14 § 12940(j). (Exhibit 1, Complaint, ¶¶ 121-132.) Yet, in support of the harassment  
 15 claim, Plaintiff alleges no actionable conduct by Ceballos as a matter of law.

16      20. The following are the only specific, factual allegations regarding  
 17 Ceballos’ conduct in the entire Complaint:

- 18           a. Upon Ceballos’ hiring in February 2016 she began to assign  
                  Plaintiff job duties that “were not feasible to perform during her  
                  night shift.” Exhibit 1, Complaint, ¶ 21 subd. (d) and (e).
- 19           b. “[O]nly after CEBALLOS became PLAINTIFF’s direct  
                  supervisor, her work performance also started to be unduly  
                  scrutinized and criticized.” Exhibit 1, *Id.* ¶ 21 subd. (f).
- 20           c. “CEBALLOS would constantly bring up the fact that  
                  PLAINTIFF’s team members . . . had to cover Plaintiff’s  
                  workload while she was out on her medical leaves.” Exhibit 1,  
                  Complaint, ¶ 21 subd. (g).

- 1                   d.     “CEBALLOS’ performance review of PLAINTIFF was  
2                   unjustified . . . as it was CEBALLOS who made it extremely  
3                   difficult for PLAINTIFF to perform her job duties in a  
4                   satisfactory manner.” Exhibit. 1, Complaint, ¶ 21 subd. (g).  
5                   e. Plaintiff “was subjected to periodic ‘touch base’ meetings with  
6                   defendant CEBALLOS, during which Plaintiff was ridiculed and  
7                   subjected to undue work criticism for her alleged ‘poor’ work  
8                   performance.” *Id.*, ¶ 27.  
9                   f. CEBALLOS and GM Maciel assigned Plaintiff a “physically  
10                  taxing assignment” despite allegedly knowing of her disability.  
11                  *Id.* at ¶ 29  
12                  g. Plaintiff’s employment was terminated in a letter signed by  
13                  Ceballos. *Id.* at ¶ 30.

14       21. As set forth below, Individual Defendant Ceballos is not liable for the  
15       harassment as a matter of law, because: (1) her alleged conduct does not rise to the  
16       level of sufficiently severe or pervasive conduct for purposes of harassment; and  
17       (2) Plaintiff’s allegations, even if true, constitute nothing more than non-actionable  
18       personnel-management decisions.

19                  **1. The Individual Defendant Is A “Sham” Defendant Because  
20                  Her Alleged Conduct Is Not Sufficiently Severe Or Pervasive  
21                  For Purposes of A Harassment Claim**

22       22. A plaintiff claiming harassment based upon a “hostile work  
23       environment” theory must show that the harassing conduct was “severe enough or  
24       sufficiently pervasive to alter the conditions of employment and create a work  
25       environment that qualifies as hostile or abusive to employees because of their  
26       [protected characteristic].” *Hughes v. Pair*, 46 Cal.4th 1035, 1043 (2009). It must

<sup>1</sup> be distinguishable from “the ordinary tribulations of the workplace...” *Etter v. Veriflo Corp.*, 67 Cal.App.4th 457, 464 (1998).

3        23. Here, there are simply no allegations of harassing conduct. Ceballos  
4 allegedly “unfairly scrutinized” Plaintiff’s work performance and assigned her  
5 infeasible job duties. The remaining allegations against Ceballos are entirely  
6 conclusory. Indeed, there is not a single specific factual allegation of any conduct  
7 that could support a claim for harassment based on Plaintiff’s age, disability, or  
8 purported engagement in protected activity. Because Plaintiff has failed to plead a  
9 viable claim against the Individual Defendant, her joinder is fraudulent. *Hamilton*  
10 *Mat. Inc. v. Dow Chem. Corp.*, 494 F.3d 1203, 1206 (9th Cir. 2007) (“If plaintiff  
11 fails to state a cause of action against a resident defendant, and the failure is obvious  
12 according to settled rules of the state, the joinder of the resident defendant is  
13 fraudulent.”). Accordingly, Plaintiff’s harassment claim against Ceballos is without  
14 merit.

**2. Ceballos Is a “Sham” Defendant Because The Alleged Harassment Is Based Solely On Non-Actionable Personnel Management Decisions**

18       24. Plaintiff's harassment claim is also without merit because at most, a  
19 supervisor's criticism of a subordinate's work performance, as reflected in  
20 performance reviews and ultimate termination, are non-actionable personnel-  
21 management decisions.

22        25. As explained by the California Supreme Court in *Reno v. Baird*, 18  
23 Cal.4th 640, 646 (1998), personnel-related decisions involving discipline,  
24 performance evaluations, compensation, or job assignments cannot constitute  
25 unlawful harassment. *Id.* at 646. This is because personnel-related decisions are a  
26 normal part of an employment relationship that cannot be avoided. On the other

1 hand, conduct that constitutes harassment is avoidable because it is not a necessary  
 2 part of the employment relationship. *Id.* In the language of the Court:

3 Making a personnel decision is conduct of a type  
 4 fundamentally different from the type of conduct that  
 5 constitutes harassment. Harassment claims are based on a  
 6 type of conduct that is avoidable and unnecessary to job  
 7 performance. No supervisory employee needs to use slurs  
 8 or derogatory drawings, to physically interfere with  
 9 freedom of movement, to engage in unwanted sexual  
 10 advances, etc., in order to carry out legitimate objectives  
 11 of personnel management. We conclude, therefore, that  
 12 the Legislature intended that commonly necessary  
 13 personnel management actions such as hiring and firing,  
 14 job or project assignments, office or work station  
 15 assignments, promotion or demotion, performance  
 16 evaluations, the provision of support, the assignment or  
 nonassignment of supervisory functions, deciding who  
 will and who will not attend meetings, deciding who will  
 be laid off, and the like, do not come within the meaning  
 or harassment. These actions are of a type necessary to  
 carry out the duties of business and personnel  
 management. *Id.* at 646-47.

17 As the Court concluded, an employee may pursue a claim for discrimination  
 18 against her employer based on such conduct, but cannot pursue a claim for  
 19 harassment:

20 These actions [including project assignments, promotion  
 21 or demotion, performance evaluations, or compensation  
 22 decisions] may retrospectively be found discriminatory if  
 23 based on improper motives, but in that event the remedies  
 24 provided by the FEHA are those for discrimination, not  
 25 harassment. Harassment, by contrast, consists of actions  
 26 outside the scope of job duties which are not of a type  
 27 necessary to business and personnel management. This  
 28 significant distinction underlies the differential treatment  
 of harassment and discrimination in the FEHA. *Id.* at 647  
 (quoting *Janken v. GM Hughes Elecs.*, 46 Cal.App.4th 55,  
 63-65 (1996)).

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1       26. Plaintiff here alleges that she was harassed on account of her age,  
 2 disability, and engagement in protected activity. (Exhibit 1, Complaint, ¶ 124.)  
 3 However, none of the conduct alleged against the Individual Defendant, even if true,  
 4 comes close to actionable harassment. Plaintiff merely alleges that Ceballos was  
 5 hired for the position for which Plaintiff applied, Ceballos criticized her job  
 6 performance, assigned her particular job duties and terminated her employment.  
 7 Each of these allegations is part of the normal course of employment, as opposed to  
 8 harassment.

9       27. These allegations are precisely the types of allegations that the  
 10 California Supreme Court in *Reno* held did not amount to actionable harassment  
 11 because the plaintiff alleged routine personnel-related conduct. *Reno*, 18 Cal.4th at  
 12 646-47; *Hardin v. Wal-Mart Stores, Inc.*, 2012 WL 691707 at \*18 (E.D. Cal., Mar.  
 13 2, 2012) (“Personnel management actions commonly necessary to carry out the  
 14 duties of business and personnel management, and thus outside the purview of  
 15 harassment, include ‘hiring and firing, job or project assignments, office or work  
 16 station assignments, promotion or demotion, performance evaluations, the provision  
 17 of support, the assignment or nonassignment of supervisory functions’ and decisions  
 18 regarding meetings.”). Because Plaintiff’s harassment claim alleges nothing more  
 19 than personnel-management activity, the harassment claim against Ceballos fails as  
 20 a matter of law.

21       28. Plaintiff’s Complaint on its face makes it clear that Ceballos is nothing  
 22 more than a “sham” defendant named for no other reason than to defeat removal.  
 23 Ceballos, therefore, should be disregarded for purposes of removal.

24           **D. Doe Defendants May Be Disregarded**

25       29. Pursuant to 28 U.S.C. section 1441(b)(1), the residence of fictitious and  
 26 unknown defendants should be disregarded for purposes of establishing removal  
 27 jurisdiction under 28 U.S.C. section 1332. *Fristoe v. Reynolds Metals, Co.*, 615 F.

1 2d 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a  
 2 removal petition). Thus, the existence of Doe defendants, 1-50, does not deprive  
 3 this Court of jurisdiction.

4       **E. Amount In Controversy<sup>1</sup>**

5       30. While Walgreens denies any liability as to Plaintiff's claims, the  
 6 amount in controversy in this action exceeds the sum of \$75,000. Plaintiff alleges  
 7 Walgreens terminated her employment on or about August 11, 2017. (Exhibit 1,  
 8 Complaint, ¶¶ 13, 30-31, 89-90, 144.) Plaintiff alleges as a result of Walgreens' acts  
 9 she "has suffered and will continue to suffer lost income, benefits, employment, and  
 10 career opportunities, as well as other economic loss, the precise nature of which will  
 11 be proven at trial. (Exhibit 1, Complaint, ¶¶ 49, 63, 78, 91, 101, 116, 129, 136,  
 12 145.) Plaintiff further alleges that as a result of Walgreens' alleged conduct, she  
 13 "endured and continues to endure emotional distress, tarnished reputation, and pain  
 14 and suffering, the precise amount of which will be proven at trial." (Exhibit 1,  
 15 Complaint, ¶¶ 50, 64, 79, 92, 102, 117, 130, 137, 146.)

16       31. To satisfy the amount in controversy of \$75,000, exclusive of interest  
 17 and costs, is not "daunting," as courts in this Circuit recognize that a removing  
 18 defendant is not obligated to "research, state and prove the plaintiff's claim for  
 19 damages." *Muniz v. Pilot Travel Centers LLC*, 2007 U.S. Dis. LEXIS 31515, \*7  
 20 (E.D. Cal., April 30, 2007). Walgreens need only "provide evidence establishing

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21  
 22       1 Nothing in this Notice of Removal is intended nor should be construed as any type of  
 23 express or implied admission by Walgreens of any fact, of the validity or merits of any of  
 24 Plaintiff's claims, causes of action, and allegations, or of any liability for the same, all of  
 25 which is/are hereby expressly denied, or as any type of express or implied waiver or  
 26 limitation of any of Walgreens' rights, claims, remedies, and defenses in connection with  
 27 this action, all of which are hereby fully and expressly reserved. Further, Walgreens  
 expressly reserves its right to amend or supplement this Notice of Removal and the  
 evidence in support thereof to the fullest extent permitted by applicable law.

1 that it is ‘more likely than not’ that the amount in controversy exceeds” \$75,000.  
 2 *Guglielmino v. McKee Foods Corp.*, 56 F.3d 696, 699 (9th Cir. 2007). Thus,  
 3 “[o]nce the proponent of jurisdiction has set out the amount in controversy, only a  
 4 ‘legal certainty’ that the judgment will be less forecloses federal jurisdiction.” *Brill*  
 5 *v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 447 (7th Cir. 2005).

6       32. The amount in controversy is determined from the allegations or prayer  
 7 of the complaint. *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283,  
 8 289 (1938) (inability to recover an amount adequate to give court jurisdiction does  
 9 not show bad faith or out court of jurisdiction). If the complaint does not, on its  
 10 face, reflect the amount in controversy, the Court may consider facts from the  
 11 removal petition, as well as evidence submitted by the parties, relevant to the  
 12 amount in controversy at the time of removal. *Singer v. State Farm Mut. Auto. Ins.*  
 13 *Co.*, 116 F.3d 373, 377 (9th Cir. 1997).

14       33. Plaintiff claims she “continues to suffer lost income, benefits,  
 15 employment and career opportunities.” (Exhibit 1, Complaint, ¶¶ 49, 63, 78, 91,  
 16 101, 116, 129, 136, 145.) Walgreens denies any liability to Plaintiff for loss of  
 17 earnings. Plaintiff alleges Walgreens’ terminated her employment on or about  
 18 August 11, 2017. (Exhibit 1, Complaint, ¶¶ 13, 30-31, 89-90, 144.) At the time of  
 19 Plaintiff’s termination, Plaintiff’s annual salary was approximately \$87,000.00.  
 20 (Exhibit 1, Complaint, ¶ 13.)

21       34. Plaintiff alleges she has suffered and continues to suffer emotional  
 22 distress. (Exhibit 1, Complaint ¶¶ 33, 50, 64, 79, 92, 102, 117, 130, 137, 146, and  
 23 Prayer for Relief, ¶ 1.) Although Walgreens denies any liability to Plaintiff for  
 24 emotional distress, these alleged damages must be included when calculating the  
 25 amount in controversy. *See Ajimatanrareje v. Metro. Life Ins. Co.*, 1999 U.S. Dist.  
 26 LEXIS 7339, \*4 (N.D. Cal. 1999) (emotional distress damages “may be considered  
 27 in the amount in controversy”).

1       35. Plaintiff seeks attorneys' fees. (Exhibit 1, Complaint, ¶¶ 53, 67, 82, 95,  
 2 105, 120, 132, 140, 149, 159, and Prayer for Relief, ¶¶ 7-8.) Although Walgreens  
 3 denies any liability to Plaintiff for attorneys' fees, claims for attorneys' fees are  
 4 properly considered in calculating the amount in controversy for purposes of  
 5 removal on grounds of diversity jurisdiction. *Galt G/S v. JSS Scandinavia*, 142 F.3d  
 6 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys' fees to be included in  
 7 amount in controversy); *Brady v. Mercedes-Benz USA, Inc.*, 243 F.Supp.2d 1004,  
 8 1010-11 (N.D. Cal. 2002) (attorneys' fees included in determining jurisdictional  
 9 amount).

10      36. Plaintiff claims she is entitled to punitive damages. (Exhibit 1,  
 11 Complaint ¶¶ 52, 66, 81, 94, 104, 119, 131, 139, 148, Prayer for Relief, ¶ 4.)  
 12 Although Walgreens denies any liability to Plaintiff for punitive damages, these  
 13 damages are included when calculating the amount in controversy. *See Guglielmino*  
 14 v. *McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007) (the  
 15 "amount-in-controversy requirement excludes only 'interests and costs.'").

16      37. Based upon the foregoing, the amount in controversy in this action  
 17 exceeds the jurisdictional minimum of \$75,000.

18      38. For these reasons, this action is a civil action over which this Court has  
 19 original jurisdiction pursuant to 28 U.S.C. section 1332, and which may be removed  
 20 to this Court by Walgreens pursuant to 28 U.S.C. section 1441 based on diversity  
 21 jurisdiction.

22 **V. NO JOINDER REQUIRED**

23      39. Unnamed, or doe defendants, are not required to join in removal.  
 24 *Emrich v. Touche Ross & Co.*, 846 F.2d 1190 n.1 (9th Cir. 1988) (doe defendants  
 25 need not join in removal).

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## **VI. VENUE**

2       40.   Venue lies in the Central District of California pursuant to 28 U.S.C.  
3 sections 1441(a), 1446(a), and 84(c)(1). This action originally was brought in the  
4 Superior Court of the State of California, County of Riverside, which is located  
5 within the Central District of the State of California, Eastern Division, and Plaintiff  
6 resides in the County of Riverside, California. See Exhibit 1, Complaint, ¶ 1.

## **VII. NOTICE OF REMOVAL**

8        41. Pursuant to 28 U.S.C. Section 1446(d), written notice of the filing of  
9 this Notice of Removal will be given promptly to Plaintiff and, together with a copy  
10 of the Notice of Removal, will be filed with the Clerk of the Superior Court of the  
11 State of California, County of Riverside, in the State Court Action.

12       42. This Notice of Removal will be served on counsel for Plaintiff. A copy  
13 of the Proof of Service regarding the Notice of Removal will be filed shortly after  
14 these papers are filed and served.

15       43. In compliance with 28 U.S.C. section 1446(a), true and correct copies  
16 of all process, pleadings, and orders filed and/or served in this action are attached as  
17 Exhibits 1 through 11.

## **VIII. PRAYER FOR REMOVAL**

19       44. WHEREFORE, Walgreens prays that this civil action be removed from  
20 the Superior Court of the State of California, County of Riverside, to the United  
21 States District Court for the Central District of California.

22 || Dated: July 26, 2018

BRYAN CAVE LEIGHTON PAISNER LLP

B: /s/ Leslie H. Helmer  
Leslie H. Helmer  
Michael E. Olsen  
Attorneys for Defendant  
WALGREEN CO.